

INTERMOUNTAIN EXPLORATION CO.

IBLA 81-795

Decided August 31, 1981

Appeal from decisions of Nevada State Office, Bureau of Land Management, declaring unpatented lode mining claims abandoned and void. N MC 11392, N MC 11393, and N MC 16185.

Affirmed.

1. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Richard V. Wyman, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Intermountain Exploration Company has appealed the June 18, 1981, decisions of the Nevada State Office, Bureau of Land Management (BLM), which declared the unpatented Wall #6, #7, and #8 lode mining claims, N MC 11392, N MC 11393, and N MC 16185, abandoned and void for failure to file notice of intent to hold or proof of labor on or before December 30, 1978, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

The Wall #6 and Wall #7 claims were located November 10, 1977; Wall #8 claim was located December 20, 1977. Each claim was duly recorded within 90 days after the date of location as required by FLPMA. Subsequent proofs of labor were recorded with BLM for each claim in 1979, 1980, and 1981, but nothing was recorded with BLM in 1978.

The statute provides that for mining claims located after October 21, 1976, the owner shall file in the proper office of BLM prior to December 31 of each year following the calendar year in which the claim was located, a notice of intention to hold the claim or an affidavit of assessment work performed thereon. 43 U.S.C. § 1744(a) (1976).

Appellant argues essentially that as the final regulations governing recordation of unpatented mining claims were not published until April 1979, it should not be penalized for noncompliance in 1978.

[1] The regulation, 43 CFR 3833.2-1(b)(1), relating to recordation of mining claims, as published at 45 FR 5300 (Jan. 27, 1977), stated:

(b)(1) The owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

The revision of 1979 changed the provisions of 43 CFR 3833.2-1(b), but made no substantive change in the requirement to file in each year following the calendar year of location. In any event, all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976).

[2] There is no ex post facto application of the law or the regulations in these cases. BLM properly declared the unpatented mining claims abandoned and void when it was ascertained that no proof of labor or notice of intent to hold was filed in 1978 for the claims in issue. This Board has no authority to excuse lack of compliance with the statute or to afford relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant argues that it has not "abandoned" the subject claims, as it has performed the required assessment work each year since the date of location, and suggests the action by BLM exceeds the statute. The question of enforceability of the Departmental regulations issued to implement FLPMA has been considered in Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). The syllabus of that decision states:

1. Mines and Minerals

Regulation promulgated under the Federal Land Policy and Management Act of 1976 which authorized that an unpatented mining claim could be deemed abandoned and void if filings required under the Act were not made was not in excess of statutory jurisdiction, authority, or limitation, or short of statutory right under the Act, which assumed that even defective filings put the Secretary of the Interior on notice of an unpatented claim; once on notice, the Secretary could not deem a claim abandoned merely because supplemental filings required only by the regulation, and not by the statute, were not made. Federal Land Policy and Management Act of 1976, §§ 314, 314(c), 43 U.S.C. §§ 1744, 1744(c).

As the requirement to file a notice of intent to hold is statutory, not merely regulatory, the claims must be declared abandoned and void because the notice of intent to hold was not filed with BLM in 1978.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

